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EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
3365		3863	Affidavit of KUMAGAI, Toshio		38576
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3003	3867		Affidavit of General SHIMOMURA, Sadamu, dated 8 March 1946 (Defense Transcript Exhibit No. 10)		38616

Friday, 30 January 1948

- - -

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE LORD PATRICK,
Member from the United Kingdom of Great Britain, not
sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

- - -

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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MARSHAL OF THE COURT: The International
1 Military Tribunal for the Far East is now in session.

2 THE PRESIDENT: All the accused are present
3 except SHIRATORI who is represented by counsel. The
4 Sugamo prison surgeon certifies that he is ill and un-
5 able to attend the trial today. The certificate will
6 be recorded and filed.

7 Major Blakeney.

8 - - -

9
10 P U N T S U G I N C H O G D A N, recalled as a witness
11 on behalf of the prosecution, resumed the stand and
12 testified through Mongolian interpreters as follows:

13 CROSS-EXAMINATION

14 BY MR. BLAKENEY (Continued):

15 Q Witness, can you read and write?

16 A In what language?

17 Q Any language.

18 A I can read classical Mongolian as well as modern
19 Mongolian very well. I can read and write it. As far as
20 the Russian language is concerned, I am not very fluent
21 in that language, but I can read a little and I know
22 certain, especially military terms, but I don't speak
23 Russian.

24 THE RUSSIAN MONITOR: Addition: "I know both
25 the old Mongolian alphabet and the modern Mongolian

alphabet."

1 Q Did you read your affidavit after you signed it
2 or before you signed it at any time?

3 A I read and signed my affidavit.

4 Q Why did you state in the affidavit that it had
5 been written down and read to you?

6 A I read the affidavit myself, but it was also
7 read to me, and that is what is said in my affidavit.

8 Q Describe the boundary country around the Nomonhan
9 area.
10

11 A Nomonhan is located on the bank of the Hailastin-
12 Gol River. Nomonhan is an Obo. It is called Nomonhan-
13 Burd Obo. There are two Obos, and the border line runs
14 between these two Obos.

15 Q What kind of country is it? Is it flat, level,
16 or mountainous?

17 A The area around Nomonhan is covered with small
18 hills which are called barkhans, and there are plains in
19 that area too. Nomonhan-Burd Obo itself is situated on
20 top of a hill which is near the Hailastin-Gol River.

21 THE RUSSIAN MONITOR: "...on top of a small
22 hill. . ."

23 Q How high are the hills in that area?

24 A I wouldn't be able to tell you the elevation of
25 these hills from the level of the sea, but the height

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1 of the hills themselves is forty to fifty meters and
2 near Nomonhan-Burd Obo their height is forty-five meters.

3 Q And the country contains many deep ravines,
4 does it not?

5 A Near the Hailastin-Gol River itself, it is low
6 country, but in the area of Nomonhan there are also small
7 swamps and ravines.

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1 Q When did you first become familiar with that
2 area of the border?

3 A My tenure of office in the Sumburin-tsagan
4 Nur outpost commenced in June 1938, and from that
5 moment I became familiar with the country -- with
6 that part of the country.

7 Q You didn't know it before then at all?

8 A No.

9 Q And you left the area, did you not, while
10 the fighting was still in progress during the Nomonhan
11 Incident?

12 A What period of time are you referring to? Would
13 you please specify it?

14 Q I am referring to the next to last paragraph
15 of your affidavit when you say that in the evening of
16 the same day, which I think is the 30th of June 1938,
17 you received another commend and proceeded to carry
18 out another task.

19 I meant 1939.

20 A From June 1938 to June 30, 1939, I served
21 in borderguard units in this area and after that I
22 was transferred to some -- to another place and I did
23 not participate in the last phase of the fighting, but
24 at the beginning of the fighting I was there and I
25 participated.

1 Q Did you ever serve in the Nomonhan area at
2 any time after that?

3 A I still served in this sector, that is, in
4 the Nomonhan area, but in July-August 1939 I was
5 transferred inland and received another mission. But
6 after that, that is, after August, I returned to that
7 sector and now -- and I am still working there.

8 THE RUSSIAN MONITOR: "Still I was not in
9 that area while the heavy fighting took place."

10 Q How recently have you seen the area where
11 the fighting took place?

12 THE RUSSIAN MONITOR: The witness says "After
13 the hostilities."

14 Q But what is the most recently that you have
15 seen that area?

16 A In September 1947.

17 Q Tell the Tribunal how the boundary was marked
18 in the Nomonhan area before the Incident, that is,
19 before the fighting took place.

20 A This sector of the State borderline is marked
21 by the bordermarks, which are Nomonhan Burd Obo, Huld
22 Ulyn Obo and Lrs Ulyn Obo. In the area of Nomonhan
23 Burd Obo there are two Obos between which the border-
24 line runs. These Obos are made of earth and on the
25 top of the Obos there are poles.

1 THE PRESIDENT: You asked the question on
2 how the border was marked before the fighting.

3 A Huld Ulyn Obo and Ers Ulyn Obo are also
4 made of stones and there are poles on them likewise.

5 Q Are you describing the way the border was
6 marked before the fighting?

7 A Yes, prior to the hostilities.

8 Q Have you completed your description?

9 A I haven't finished my description yet.

10 Q Go ahead.

11 A Between these three obos there are certain
12 places by which the state borderline could be deter-
13 mined; that is, between Ers Ulin obo and Huld Ulin
14 obo there are small hills, or barhans, on top of which
15 the borderline runs. I will name these small hills.
16 That is, starting from Huld Ulin obo, they are as
17 follows: Harulinogdo, Nogantolgy, Mahurinmanhan, and
18 they are running from Huld Ulin obo up to Nomonhan
19 Burd obo.

20 From Ers Ulin obo up to Nomonhan Burd there
21 are the following small hills: Gunzalgan, Oboto,
22 Huruntulge, and Otorinmanlan. They are reaching up
23 to Nomonhan obo. In addition, in certain places
24 where orientation was difficult in determining the
25 border, there were poles which facilitated orientation

as to the location of the border.

Q That about the boundary monuments between the obos? Describe those.

A I have told you already what border marks or border monuments are there between those obos in my previous reply.

Q As I understood you, you spoke of poles at difficult places, but I am speaking about the wooden boundary monuments which stood one to one and a half kilometers apart between the obos along the length of the border in this area.

A There were no poles during the whole length of the state borderline; there were only separate places where it was difficult to determine where the borderline passed, as I told you previously, and there were poles on top of obos, as I told you previously as well.

Q How high were those poles?

A Over two meters.

Q How wide were they -- how thick?

A I didn't measure them, but I can say they were more than 20 centimeters thick.

Q Were there inscriptions on them?

A The poles between the obos bore numbers in numerical succession, and those on top of obos had the

inscription "The Mongolian People's Republic."

1 Q That inscription was not on the poles between
2 the obos, then, if I understand correctly?

3 A On those border markers which were between
4 obos there were no inscriptions except numbers in
5 numerical succession, but those which were on top of
6 obos bore inscriptions.

7 Q Did the numerical succession run from north
8 to south or south to north?

9 A I wouldn't say that those border markers
10 were placed in any strict order, and so it would be
11 pretty hard to say whether they ran from south to north
12 or otherwise. They were placed only in some places
13 between the obos.

14 Q About how many of them were there altogether
15 of that type of marker?

16 A I can't say the exact number, but approximate-
17 ly more than ten.
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1 Q Was the condition of the border markers which
2 you have just described, true during the entire period
3 from October 1938 until you left the area in June 1939?

4 A In June 1938 when I first arrived in the area
5 the border markers were all there, but in the course
6 of hostilities there were such cases when the Japanese
7 destroyed them or carried them away.

8 THE MONITOR: Slight correction: When they
9 were destroyed or carried away by the Japanese.

10 A (Continuing) After the cessation of hostilities,
11 beginning from 1940, in accordance with the well-known
12 agreement on the redemarcation of the border, special
13 border markers were established on the border, were
14 set up on the border.

15 Q Those markers which you have described as
16 being there in June 1939, do you know whether they
17 had been established recently or had been there a
18 long time?

19 A As to the markers atop obos, I can tell you
20 that they had been there since a very long time ago,
21 but when they were first set up, and under what agree-
22 ment, and by whom, I have no knowledge. As to the mark-
23 ers between obos, I can tell you that they serve for
24 orientation and they were set up when necessary.
25

1 Q Well, I am afraid that is not very clear to
2 me. Tell me, for example, were the markers between
3 obos there in March 1939?

4 A Yes, they were there, as I told you previously.

5 Q Now, please listen carefully to this. I have
6 the following information and I want you to tell me
7 whether it is correct or incorrect: I have the
8 information that between obos on this border in
9 this area there were wooden border monuments which
10 stood one to one and one-half kilometers apart,
11 that these monuments were 2½ to 3 meters high, and
12 that they bore on them inscriptions in Mongolian.
13 Is that true or false?

14 THE PRESIDENT: General Vasiliev.

15 GENERAL VASILIEV: May I ask the defense counsel
16 to refer us to the document from which he is quoting?
17 I believe this has been the practice with this Tribunal.

18 THE PRESIDENT: No, it is not necessary. We
19 know where he gets it, but it is not necessary to tell
20 the witness. Let the witness answer. We recognize
21 much of it, at least I think we do.

22 A I have told you previously, that between the
23 obos there were border markers which were at a
24 distance sometimes 1½ kilometers, and sometimes even
25 more than that from each other; and I also told you

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1 that upon these border markers there were numbers in
2 succession which were written in old Mongolian figures,
3 and as to the poles on top of obos, those poles bore
4 the inscription "Mongolian People's Republic."

5 THE PRESIDENT: Well, there is no need to
6 carry it further. We can make the comparison.
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1 Q The border between Outer Mongolia and
2 Manchuria remained after the Nomonhan Incident just
3 where it was before, did it not?

4 A The border line between the Mongolian People's
5 Republic and Manchuria remained the same as it was
6 prior to hostilities in the Nomonhan area.

7 Q With no exceptions?

8 THE INTERPRETER: The witness says he hasn't
9 finished his answer.

10 MR. BLAKENEY: I think you have given enough
11 on that subject. We have to shorten this because of
12 the difficulties of translation.

13 THE PRESIDENT: Let him finish his answer
14 first.

15 A (Continuing) The state border line underwent
16 no changes after the hostilities ceased but in accord-
17 ance with the agreement between the two states the re-
18 demarcation of the border line took place.

19 Q Is the border in that area since the re-
20 demarcation marked in the same way as it was before?

21 A No changes whatsoever.

22 Q When did the Mongolian forces first start
23 putting their outposts on the east bank of the Halha
24 River?
25

A The eastern bank of the Halha River was

1 always guarded by the Mongolian border guards and,
2 more specifically, the outpost itself, or the outpost
3 of the border guard detachment itself, was on the
4 western bank of the Halha River and the post's patrols
5 sent out were on the eastern bank. After June 5, 1939
6 when the cases of violation of the border by the
7 Japanese and Manchurians became more frequent in
8 accordance with the instructions of authorities my
9 border outpost was transferred to the Huld Ulyn Obo
10 area.

11 THE MONITOR: Strike out "and Manchurians."

12 Q Well, you stated in your affidavit that on
13 the 11th of May a temporary frontier guard patrol was
14 dispatched to the area six kilometers southwest of
15 Namum-Burd-obo.

16 THE MONITOR: Reporter on the floor, what
17 was the place name?

18 (Whereupon, the official court reporter
19 read as follows: "Namum-Burd-obo.")

20 MR. BLAKENEY: That is what the affidavit
21 says but that should be Nomonhan Burd Obo.

22 Q (Continuing) Now I ask you whether that was
23 not, in fact, the first time that a Mongolian unit
24 had been dispatched or stationed east of the Khalkin-Gol?
25

A As I told you previously, the eastern bank

1 of the Khalkin-Gol River was guarded by the Mongolian
2 border guards since old times, and you mustn't draw
3 the conclusion that they first appeared on the eastern
4 bank when the cases of violation became frequent, and
5 I state that what is stated in my affidavit pertains
6 only to this period.

7 THE PRESIDENT: We will recess for fifteen
8 minutes.

9 (Whereupon, at 1045, a recess was
10 taken until 1100, after which the proceedings
11 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney, do you antici-
4 pate being much longer with this witness?

5 MR. BLAKENEY: No, your Honor. There are a
6 number of points which in the normal course I should
7 wish to cross-examine on but I believe that in prevail-
8 ing conditions I will cut my cross-examination to the
9 very minimum and try to finish promptly.

10 (Whereupon, at the request of the
11 Russian Monitor, the last answer was read
12 by the official court reporter as follows:
13 "As I told you previously, the eastern bank
14 of the Khalkin-Gol River was guarded by the
15 Mongolian border guards since old times, and
16 you mustn't draw the conclusion that they first
17 appeared on the eastern bank when the cases of
18 violation became frequent, and I state that what
19 is stated in my affidavit pertains only to this
20 period.)

21 RUSSIAN MONITOR: Strike out the last part
22 and substitute: The date when the violations commenced
23 is pointed out in my affidavit.

24 BY MR. BLAKENEY (Continued):

25 Q Now, how does it come that troops were

1 dispatched on the 11th of May from the guard unit to
2 the point east of the Khalkin-Gol which you have men-
3 tioned in your affidavit?

4 A In my affidavit there was not a single word
5 to the effect that on May 11th there were regular
6 Mongolian forces on the eastern bank of the Khalkin-
7 Gol River. In fact, on May 11th there were only border
8 guard units and reserve border guard units on the east
9 bank in order to block the advance of the Japanese
10 forces which had violated the border line and invaded
11 the territory of the Mongolian People's Republic.

12 Q I will quote from your affidavit and try again
13 to get an answer. You say in your affidavit: ". . on
14 the night of May 11, 1939 a temporary frontier guard
15 patrol 20 men strong under the command of political
16 instructor of the outpost Tsedjipa was dispatched by
17 me to the area 6 kilometers south west of Namum-Burd-
18 obo." I asked you why.

19 THE PRESIDENT: I suppose you have read the
20 following sentence, Major.

21 A It is not correct to draw the conclusion that
22 this patrol which was sent out was a part of a regular
23 army unit. It was a border guard patrol and it was
24 sent to guard the border line.

25 Q I have drawn no conclusion whatever. I asked

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1 you why at that specific time that action was taken.

2 A Patrols were sent to that area not only on
3 the 11th of May but before and subsequent to that date.
4 That was a usual procedure and they were sent not only
5 to that area but to other places as well.

6 The date May 11th is pointed out in connection
7 with the violation of the border line in that area by
8 forces of the adjacent nation.

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1 Q But the 11th of May was, was it not, the
2 first time that a patrol sent to that location was
3 attacked by Japanese forces, or Manchurian, as the case
4 may be?

5 A The large force of the Japanese, over three
6 hundred men, attacked the Mongolian territory speci-
7 fically this date, May 11th. In general the viola-
8 tions of the border, state border line of the Mongolian
9 People's Republic took place even earlier -- violations
10 by the Japanese took place even earlier. For instance,
11 since December 1938 small groups of Japanese, 10, 20
12 or 40 men strong, frequently violated the state border
13 line, invaded the Mongolian territory, and there were
14 small-scale incidents. But the first violation of a
15 large force of Japanese occurred on May 11th -- large
16 force over three hundred men strong.

17 Q The Japanese forces which, as you call it,
18 invaded the territory of Mongolia, did they ever cross
19 the Khalkin-gol?
20

21 A What period of time are you referring to,
22 Mr. Counsel?

23 MR. BLAKENEY: I didn't get that.

24 (Whereupon, the answer was read
25 by the official court reporter.)

 Q At any time during the fighting that you have

testified about.

1 A The Japanese forces which had invaded the
2 territory of the Mongolian People's Republic on the
3 east bank of the Khalkin-gol River were repulsed by
4 by our border guards and were, therefore, unable to
5 cross the river. It was only on May 14th and 15th,
6 1939 when our border guards, under the pressure of
7 overwhelming Japanese forces, were forced to withdraw
8 to the western bank of the Khalkin-gol River, and the
9 Japanese crossed to the --

10 THE RUSSIAN MONITOR: And the Japanese troops
11 which invaded the territory of the Mongolian People's
12 Republic seized the territory up to the east bank of the
13 Halha River.

14 Q How many Mongolian frontier guards were en-
15 gaged in the fighting at that time, the 14th and 15th
16 of May.

17 A During this fighting our border guard outpost
18 had two hundred men engaged in the fighting, and also
19 a reserve unit sent out by the border guard detachment
20 to help us which consisted approximately of one hun-
21 dred men. That altogether makes the strength of our
22 forces three hundred men, and this force blocked the
23 way of the Japanese invaders.

24 Q What was the size of the units of the Mongolian
25

1 army which came to your assistance at that point?

2 A What days do you mean?

3 Mr. BLAKENEY: What was that?

4 (Whereupon, the answer was read
5 by the official court reporter.)

6 Q Whatever days you mean when you say in your
7 affidavit, "units of the Mongolian Army came to our
8 assistance, and finally the Japanese-Bargut units were
9 thrown back to the adjacent territory."

10 A If you are referring to the 14th and 15th of
11 May I must tell you that we had no reinforcements from
12 the regular army at that time. But we received rein-
13 forcement from the regular army in the second part of
14 May, namely, on May 20th.

15 Q Well, tell me what their size was.

16 A Since I was not a commanding officer of the
17 regular army units I can't tell exactly the number,
18 the strength of the regular army units which arrived
19 at the end of May, but approximately two squadrons.
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Q How many men in a squadron?

A I don't know the exact numerical strength of a squadron, but I believe over a hundred men.

Q When did Soviet Army forces arrive at the scene of the fighting?

A The first Soviet units arrived at the scene of the fighting on 23rd-24th of May.

Q What was their strength?

A That I don't know.

Q Did they bring tanks and artillery?

A The first units which arrived at the scene of the battle didn't have tanks, but they had armored cars; their infantry had armored cars.

Q Tanks came in later, did they not?

A Subsequently there were tanks, artillery and infantry.

Q And Soviet aircraft?

A At the beginning, no Soviet aircraft.

Q But later?

A When large-scale operations commenced there was aircraft, Soviet aircraft.

Q What is the date on which commenced what you call large-scale operations?

A The first blow was dealt to the opposing forces on 28-29 May, and finally they were repulsed

at the end of July and in August.

1 THE MONITOR: Strike out "the opposing
2 forces."

3 Q When the Soviet planes arrived, what part
4 did they take in the operations?

5 A The Soviet air force took part in operations
6 on May 28-29.

7 Q I asked you: What part did they take?
8 What did they do?

9 A They were engaged in fighting the Japanese
10 aircraft.

11 Q Did they also bomb the Japanese installations?

12 A No.

13 Q Did they not attack the Japanese rear, and
14 especially their supply depots?

15 A The Soviet and Mongolian forces had strict
16 instructions not to violate the border line.

17 THE PRESIDENT: Is it necessary to get any
18 more details of this kind?

19 MR. BLAKENEY: Of course, your Honor, he is
20 contradicting other prosecution witnesses. But I
21 will be glad to leave it at that point.

22 Q What was your rank at the time of this
23 fighting?

24 A Junior lieutenant.
25

1 Q And how many men were actually under your
2 command at that time?

3 A About two hundred men.

4 Q Are you able to affirm, then, that during
5 the entire course of this fighting, no Mongolian or
6 Soviet soldier crossed the state frontier into the
7 territory of Manchukuo?

8 A The Mongolian military units were in their
9 own territory in the course of fighting, and I can
10 affirm it. Not a single time did they cross the state
11 border line. They were on their territory during the
12 fighting as well as before the fighting.

13 MR. BLAKENEY: That concludes the cross-
14 examination.
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THE PRESIDENT: General Vasiliev.

GENERAL VASILIEV: I have two questions.

REDIRECT EXAMINATION

BY GENERAL VASILIEV:

Q Mr. Witness, first you stated that the map tendered before the Tribunal was drawn up by you; and then being asked by the defense counsel you said that the map was not drawn by you but by some other person. Could you explain what you had in mind?

A Yesterday, when I testified with respect to the map attached to my affidavit I was apparently misunderstood. I would like to give a more detailed explanation with respect to this matter.

In December, 1946, when I gave my testimony to Lieutenant Colonel Sambunina he had a large map of the scale 1:200,000, and I, myself, marked on the map when, where, and in what direction the Japanese and Manchurian forces violated the border. I marked all events on that map, and I also marked the positions of our troops, that is, Manchurian troops. And when I was giving my testimony to Lieutenant Colonel Sambunina and marked on his large map scale 1:200,000, I asked him to have this map traced in order to facilitate the use of the affidavit and that the

tracing be made as a sketch map.

1 THE PRESIDENT: We note that he did not
2 swear yesterday that he made the map but he accepted
3 your suggestion that he did, and we would assume, in
4 the absence of proof to the contrary, that your sug-
5 gestion was based on what he told you.
6

7 GENERAL VASILIEV: I would like the witness
8 to finish his reply and to do that in a very brief
9 form.

10 A (Continuing) Lieutenant Colonel Sambunina
11 consented and authorized one of his personnel to make
12 the tracing on a separate sketch map, to make a tracing
13 from the large map on a separate sketch map, and that
14 was done, and the sketch map was shown to me so I
15 could see that the sketch fully corresponded to what
16 I marked myself.

17 GENERAL VASILIEV: That is enough. I will
18 ask the last question.

19 Q Will you tell, Mr. Witness, when the question
20 was put by defense counsel to the effect whether the
21 state border line underwent any changes after the re-
22 demarcation was carried on, you said there were no
23 changes. Will you tell, did you mean there were no
24 changes in the southern part --
25

SOVIET MONITOR: Did you only mean the

1 battlefield or the southern sector around the river
2 as well?

3 A I understood the question asked by the defense
4 counsel to mean that he was referring only to my
5 sector, that is, to Nomonhan Burd Obo, Huld Ulyn Obo,
6 and Ers Ulyn Obo, and therefore I replied that there
7 were no changes.

8 I haven't finished yet.

9 But in the neighboring sector on my right,
10 that is, to the west, the border line was changed, and
11 it was established closer to the river, that is to say,
12 in the southern of my sector of the border.

13 GENERAL VASILIEV: May the witness be excused
14 on the usual terms? I have no other questions.

15 THE PRESIDENT: He is excused accordingly.

16 (Whereupon, the witness was excused.)

17 So far no Member of the Court has intimated
18 to me that he favors a recess of any duration. I
19 understand some of the defense counsel are prepared to
20 go ahead with their particular cases. Probably the
21 inclination will be to take those, at all events, and
22 to proceed until we are brought to a standstill.

23 We will adjourn until half-past one.

24 (Whereupon, at 1200, a recess
25 was taken.)

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AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at 1330.

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3 MARSHAL OF THE COURT: The International
4 Military Tribunal for the Far East is now resumed.

5 THE PRESIDENT: Colonel Mornane.

6 COLONEL MORNANE: If the Tribunal pleases, at
7
8 page 16,075 of the transcript, exhibit 2235, "Outline of
9 Two Speeches of Kenryo SATO," was introduced in evidence.
10 It bore the seal of one KUMAGAI. Your Honor, the
11 President, requested that the identity of the writer of
12 the document be ascertained. During the course of the
13 cross-examination of one of the defense witnesses,
14 KAWABE, at pages 22,032 to 22,042, the matter was again
15 referred to.

16 To clear it up, I now tender IPS document No.
17 3365, which is an affidavit by KUMAGAI, Toshio, stating
18 that he was a 3rd Class Secretary in the Police Bureau of
19 the Home Ministry at the time the speeches were delivered
20 and certifying that the document is a correct summary of
21 the two speeches. I do not propose to read the affidavit.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Prosecution document 3365
24 will receive exhibit No. 3863.

25 (Whereupon, the document above

1 referred to was marked prosecution exhibit
2 No. 3863 and received in evidence.)

3 COLONEL MORNANE: I understand that the defense
4 have an affidavit from this man as to this subject
5 matter and desire to introduce it now so that the whole
6 matter will be cleared up at the one part of the tran-
7 script. Prosecution has no objection to this course.

8 THE PRESIDENT: Mr. Freeman.

9 MR. FREEMAN: If the Tribunal please, defense
10 document 3020 is now tendered in evidence to show, first,
11 that exhibit 207, or exhibit 2235, which is the same, is
12 not an official document; second, that the writer,
13 KUMAGAI, knows no shorthand and only made notes of these
14 speeches at the time they were made; third, that
15 KUMAGAI later wrote up this document from his notes as
16 he remembered them.

17 Therefore, the speeches cannot, in all serious-
18 ness, be considered policy-making speeches and, further,
19 be of any importance to the Tribunal,
20

21 THE PRESIDENT: Admitted on the usual terms.

22 CLERK OF THE COURT: Defense document 3020 will
23 receive exhibit No. 3864.

24 (Whereupon, the document above
25 referred to was marked defense exhibit
No. 3864 and received in evidence.)

1 MR. FREEMAN: I shall now read into evidence
2 exhibit No. 3864:

3 "Having first duly sworn on oath on attached
4 sheet, and in accordance with the procedure followed in
5 my country, I hereby depose that I have answered Attorney
6 KUSANO's, Hyoichiro, questions as follows:

7 "1. Q. Do you know that on August 25-29,
8 SATO, Chief of Press Section of the War Ministry,
9 delivered a lecture at the Chief of Prefectural Police
10 Conference in the Home Office?

11 "A. Yes, I do. When conferences of Chiefs
12 of Prefectural Police were held at the Home Office,
13 people from various circles were often requested to give
14 lectures on the current questions of importance. It is
15 in accordance to this circumstance, I think, that
16 Colonel SATO, Chief of Press Section of the War Ministry,
17 was invited by the Police Bureau of the Home Office to
18 give a lecture on the occasion of the said conference of
19 Prefectural Police Chiefs concerning the actual state of
20 the China affair, so that the police chiefs might be
21 able to dispel the rumours running by making use of the
22 information thus given.

23
24 "2. Q. Did you prepare this document, exhibit
25 270/2235, yourself? If so, tell us how you prepared it,
and especially how accurate the statement is.

1 "A. I am no stenographer. However, during
2 the session of the conference above referred to, two
3 lectures, I believe, if I remember right, were given.
4 These lectures did not necessarily agree with each other,
5 it seems to me. After the lectures were given, I jotted
6 down roughly about 100 pages, which, I am inclined to
7 think, I arranged in about 50-60 pages. The fact is,
8 Colonel SATO spoke very fast and I remember finding it
9 extremely hard to take memos of what he said. The
10 present document was not subjected to Mr. SATO's review,
11 and so fearing that there may be something that may not
12 exactly accord with his speeches, I attached at the
13 beginning of the present document a note saying, 'The
14 responsibility for the wording of the document rests
15 with the witness.' Such is the case as far as I remember
16 of the time.

17 "On this 22nd day of January, 1948."
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THE PRESIDENT: Mr. Oneto.

1 MR. ONETO: I present in evidence IPS document
2 No. 3367. It is a report established by General Martin,
3 Commander in Chief of the troops in Indo-China, and
4 giving a review of events at Langson in September 1940.
5

6 This document is offered to rebut the statement
7 made by the accused TOJO that an exchange of firing
8 took place between Japanese and French troops on the
9 border between French Indo-China and China, page
10 36,202, and that there were more encounters of arms
11 suffered within the same date, page 36,203.

12 This review of events at Langson set forth
13 the importance of the battle which occurred in this
14 area and contradicts the declaration of the accused
15 TOJO who tried to minimize this incident.

16 MR. LAZARUS: Mr. President, I see that the
17 Japanese and the American attorneys for General TOJO
18 are not present, so on his behalf I will take the
19 general objection that the accused have offered against
20 this type of evidence.
21

22 THE PRESIDENT: Well, we have not seen the
23 document yet. We are waiting to be supplied with
24 copies.

25 By a majority the objection is overruled and
the document admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution document
2 3367 will receive exhibit No. 3865.

3 (Whereupon, the document above re-
4 ferred to was marked prosecution exhibit No.
5 3865 and received in evidence.)

6 THE PRESIDENT: Is there any need to read it,
7 Mr. Oneto?

8 MR. ONETO: Your Honor, I find that this
9 document is of great importance and I prefer that
10 I should read this document. The reading will not
11 take more than five minutes altogether.

12 THE PRESIDENT: You summarized it pretty well;
13 but read it.

14 MR. ONETO: I will now read IPS document 3367,
15 exhibit No. 3865.

16 "Indo-China Command

17 "General Staff, G-2

18 "Hanoi, 15 October 1940

19 "Secret

20 "No. 3015/2B

21 "DRAFT OF CABLE TO THE DEPARTMENT

22 "Reply to State Telegram No. 520/R of 11

23 October 1940 from COLONIES to GOUGAL

24 "Review of Events at Langson

25 "22 September - At 1400 hrs. The General

1 Officer commanding the Japanese Division at Longtcheou
2 had a letter intended for the High Command, sent to
3 the Commanding Officer at Dong Dang, giving the
4 information that the Japanese troops would enter
5 Indo-China peacefully and would pass through Hanoi
6 and that no armed resistance should be offered.

7 "At 2200 hrs. The Japanese enter Tongking
8 in battle formation on the front Binh Chi Ma. Sergt.
9 Dubuc on duty near Dong Dang, wounded by a bayonet at
10 2210 hrs, fired after challenging.

11 "The Corporal of the blockhouse at Namquan
12 on duty about 22.25 hrs fired shots in the air after
13 challenging on noting suspicious movements.

14 "Attack on the Namquan blockhouse and positions
15 at Dong Dang by artillery and tanks during the night
16 and morning 22/23 September

17 "23...../..../...

18 "23 September - The post Dong Dang occupied
19 in the morning.

20 "At 0700 hrs. - Intervention by Colonel KOIKE,
21 General NISHIHARA's Chief of Staff, to stop firing; could
22 only apply to elements of the first line who did not
23 know of the agreement (or were purposely ignoring it).
24

25 "23 September (Continued)

"French ceased fire on condition Japanese

1 troops did not pass the line reached before the incident
2 was settled.

3 "At 0845 hrs. - Japanese planes flew over Lang-
4 son and dropped leaflets. 'Stop fighting. The Japanese
5 are returning to China.'

6 "At 1010 hrs. - Langson airfield bombed.

7 "At 1500 hrs. - Second bombing of Langson Kylua.
8 Japanese movement on Langson resumed at the end of the
9 afternoon of 23rd while an invasion via Diemhe, west of
10 Langson, manifested itself.

11 "At half past one the same day, the Chima post
12 was attacked. Its garrison retired on Loc Binh as
13 arranged. French intervention under a flag of truce at
14 9 o'clock in order to have the agreement made known.
15 Japanese advance in force resumed at 1600 hrs. Loc Binh
16 evacuated by the French after heavy fighting at 17.45
17 hrs.

18 "The same day a Japanese column made a drive
19 from Dong Dang on Nacham. The post was reached in the
20 evening, was attacked next morning and evacuated on the
21 evening of the 24th after vigorous resistance.

22 "Binhi attacked at 2300 on 22 September.
23 Garrison retired on That Khe which place the Japanese
24 reached and occupied on 24 September.

25 "24 September - Japanese heavy losses at

Nacham-Loc Bing-Dong Dang. Night and early morning calm.
1 Japanese infiltration became more acute into the Langson
2 position by the middle of the morning; and in spite of
3 orders not to fire until absolutely unavoidable, the
4 position was obliged to open artillery fire.../.../...

5 "Diem He taken by the Japanese during 24 Sep-
6 tember. A large scale invasion into the Langson position
7 commenced in the East in the same way by Japanese ele-
8 ments.
9

10 "End of the evening - Flanking French force near
11 Langson shut themselves in with the garrison of the Kylua
12 position.

13 "25 September - Kylua-Langson bombed and shelled
14 from 0530 to 0930. General Mennerat authorized at 1040
15 to enter and contact Japanese forces to make known the
16 agreement which had come about and arrange maintenance
17 of the status quo while the incident was being settled.

18 "Profiting by the cessation of fire and the fact
19 that negotiations were going on the Japanese expedited
20 their advance and encircled the position and penetrated
21 the defences at a point on the North front. In view of
22 this 'fait accompli' and under threat of a violent ulti-
23 matum General Mennerat was obliged to sign the articles
24 of surrender at 1600 hours though the Japanese breach of
25 faith had hopelessly compromised their terms.

1 "Fighting ceased on the whole front, Thatke-
2 Nacham-Langson-Loc Binh, the objective of the Japanese
3 Division on the evening of the 25 September.

4 "Lieutenant General Martin,
5 "Commander-in-Chief of Troops of the Indo-
6 China Group.

7 "/s/ Martin

8 "TRUE COPY

9 "The Chief of Staff G-2

10 "Signed R. Lemaitre

11 "Seal: Indo-China Forces

12 "General Officer Commanding in Chief"

13 THE PRESIDENT: Brigadier Nolan.

14 BRIGADIER NOLAN: May it please the Tribunal,
15 that concl. the rebuttal evidence being offered by
16 the prosecution.

17 (WHEREUPON, THE PROSECUTION RESTED
18 IN REBUTTAL.)
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1 THE PRESIDENT: Mr. McManus.

2 MR. McMANUS: Mr. President and Members of
3 the Tribunal, I have several documents I would like
4 to present on surrebuttal and with the permission of
5 the Tribunal I would like to proceed.

6 THE PRESIDENT: Mr. Chief of Counsel.

7 MR. KEENAN: Mr. President, the prosecution,
8 having terminated its rebuttal, objects to the
9 introduction of any further testimony or evidence in
10 this cause.

11 Whether, Mr. President, we follow the provisions
12 contained in the Charter, which we had thought were
13 mandatory upon all of these proceedings, or whether we
14 follow the ordinary procedure prevalent in criminal
15 trials and other trials, we assume that the party to
16 the controversy that has the burden has the right
17 to begin the proceedings and to terminate them. If
18 some new type of procedure, or new to many of us who
19 practice in certain jurisdictions, is to be adopted,
20 the prosecution respectfully requests direction from
21 this Court.
22

23 If the test of the admissibility of evidence
24 at this time is still the test of whether evidence is
25 important and whether it has probative value, are we
to assume, Mr. President, that when these various and

1 sundry accused get through now with the resubmission
2 of evidence as to other parts of the case, or whatever
3 part they see fit, that the prosecution will then
4 attempt to submit whatever evidence it finds has
5 probative value and importance? Or have we arrived
6 at a type of narrowing-down process in these proceedings?
7 Does the Court mean that only such matters now will
8 be permitted to be offered by the accused as will
9 meet new matter raised in what we thought was rebuttal
10 phase of the prosecution?

11 In carefully perusing and analyzing the record
12 it would appear at some time that the Court has so
13 indicated, but at other times the clear standard has
14 been raised as to whether testimony has probative value
15 or whether it is important.
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THE PRESIDENT: If the prosecution has confined
1 itself to evidence which is strictly evidence in re-
2 buttal in the true sense, it hardly matters what the
3 Court was prepared to do.

4 MR. KEENAN: May I inform the Court that I had
5 not quite completed my statement? It is very brief.

6 We have, Mr. President, attempted to confine
7 our evidence to rebuttal evidence in the strictest sense
8 and to such extent that we will offer no more evidence
9 in this trial under any circumstances.

10 To those Members of the Court -- I guess per-
11 haps all of them -- who participated in the conversa-
12 tions with reference to the summation, we have our
13 general part of the summation and almost all of it com-
14 pleted, ready to lodge with this Court in a matter of a
15 few days. Obviously, we cannot include parts of the
16 long detailed summation, and evidence that comes in in
17 installments of this nature, without knowing when it is
18 going to end. We do not understand, Mr. President,
19 when it is to end, and as we believe that none of the
20 evidence that will be offered as rebuttal raises any
21 new points, if it is confined to answering rebuttal
22 evidence, we will make no more detailed objections, but
23 we will object to each and every item of evidence that
24 is offered to this Court from this time on.
25

1 THE PRESIDENT: If you have given in rebuttal
2 evidence which you would have given in chief, had you
3 the evidence available to you, the defense must have a
4 right to answer that at all events. They have the same
5 right to answer that as they would have if you had given
6 that matter, that evidence, in chief and not in rebuttal.
7 There is no answer to that; at least we cannot furnish
8 one.

9 The question is: Is there such evidence given
10 in rebuttal by the prosecution that the defense have the
11 right to answer? And until we hear them, we can make no
12 decision.

13 MR. KEENAN: In answer to your Honor's questions,
14 with great respect, I can suggest to this Court that at
15 no time have we made a motion to reopen the prosecution's
16 case. I have no way of knowing, Mr. President, what
17 the defense offers, but I do have a way of knowing
18 what 26 witnesses might mean, or 60 documents might
19 signify.

20 MR. LOGAN: May I say a few words in answer to
21 the Chief Prosecutor, Mr. President?

22 THE PRESIDENT: Well, Mr. Logan, is there any
23 need? We will hear you in alphabetical order, commenc-
24 ing with the accused ARAKI's counsel.

25 MR. LOGAN: May we assume, then, that the

1 Tribunal is going to proceed on the basis of the decision
2 which was made on January 14, 1948, at record page
3 37,330?

4 THE PRESIDENT: I do not know what decision
5 you refer to. You might read it.

6 MR. LOGAN: It is a statement by the President:

7 "The Tribunal has decided to receive any
8 evidence tendered by the prosecution which, in the
9 judgment of the Tribunal, has probative value and is
10 of importance. But the defense may apply to tender
11 evidence in answer to the prosecution's further evidence
12 and each application will be considered on its merits."

13 THE PRESIDENT: We are prepared now to receive
14 those applications, commencing with the accused ARAKI.

15 MR. LOGAN: There is one other matter that I
16 would like to bring up at this time, with the Tribunal's
17 permission. This has been prepared by Mr. Brannon, and
18 he asked me to present it in view of the fact that the
19 Chief Prosecutor brought up the question about summations.

20 On December 16, 1947, the Tribunal promulgated
21 Rule 11 pertaining to final arguments and summations.
22 Prior to the issuance of these rules of procedure, in-
23 formal discussions were held between the prosecution
24 and the defense, in the presence of some Members of the
25 Tribunal.

1 We believe that the ruling of the Tribunal
2 was predicated upon those discussions after weighing
3 the merits of what had been said by both sides. For
4 that reason we assumed that the prosecution was re-
5 quired to make its summation first, so that the de-
6 fense would have the privilege of answering point by
7 point the reasoning advanced by the prosecution, and
8 likewise the prosecution was provided by the ruling
9 the right to answer such statements as the defense
10 might make in its summation.

11 The answering of the prosecution argument be-
12 comes one of the vital tasks befalling defense counsel,
13 since it is our method of directly assisting the Tri-
14 bunal towards digesting the very material to be found
15 in this voluminous transcript. For the defense to
16 argue at random without reference to the prosecution's
17 statements, or to be forced to anticipate such prose-
18 cution statements, would render unnecessary the ruling
19 of the Tribunal providing for the prosecution to argue
20 initially. Therefore we must assume that the purpose
21 of the Tribunal's interpretation of the Charter pro-
22 vision regarding procedure must have been predicated
23 upon the expectancy that the defense will enjoy the
24 privilege of answering the prosecution.
25

In the order made and referred to there is

1 no reference to the prosecution's serving their argu-
2 ment upon the defense ahead of time. Were it not for
3 the technical difficulties of processing, no complaint
4 would logically lie here; but since we have found it
5 impossible to draft our arguments in a manner approach-
6 ing the form in which it will be finally given, we
7 earnestly request now that the Tribunal either amend
8 its ruling to provide for this admission, or to issue
9 a direction to the prosecution pertaining to the matter.
10 It is therefore to disclose fully to the Tribunal, as
11 we did at the informal chamber hearings, the processing
12 difficulties which will be facing us if a last-minute
13 serving of the final prosecution arguments are made
14 upon us, for until such arguments are placed in our
15 hands we will be unable to draft in final form the
16 defense arguments to be made, and until they are draft-
17 ed in final form no processing is possible.

18 THE PRESIDENT: The existing order was made
19 after consideration in chambers. I think you had
20 better come into chambers again and let us thrash out
21 this.

22 MR. LOGAN: Will we set that for four o'clock
23 this afternoon, if the Tribunal please?
24

25 THE PRESIDENT: Mr. Keenan.

MR. KEENAN: Mr. President, this matter that

1 has been presented to this Court is entirely out of
2 order and in derogation of its rules. I think it is
3 addressed more to the President than to the Court.
4 But if it is to be given serious consideration, I
5 suggest we have a little time to consider the matter
6 and not make too hasty an approach to it.

7 THE PRESIDENT: It didn't occur to me that
8 Mr. Logan was addressing me and not the whole Tribunal.
9 As a matter of fact, I was in Australia when the order
10 under discussion was made and I had nothing to do with
11 it, but I understand the order followed conferences
12 which you attended, I am told, Mr. Chief of Counsel,
13 as well as counsel for the defense, and I would like
14 the Judges who were present at that conference to meet
15 you all again in chambers with myself to see whether
16 this can be straightened out if there is any straighten-
17 ing out needed.

18 MR. KEENAN: There was an order issued, as
19 your Honor knows. The prosecution took it very serious-
20 ly. Regardless of who issued it, we thought it was
21 authorized and attempted to comply with it.
22

23 MR. McMANUS: May I proceed, your Honor?
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1 THE PRESIDENT: Make your application.

2 You are invited to do so.

3 MR. McMANUS: If your Honor please, I would
4 like to tender in evidence defense document No. 3025--

5 THE PRESIDENT: You are applying now to give
6 this evidence, and you will have to give us the reasons.

7 MR. McMANUS: I would like to tender this
8 document in refutation of the allegation by the
9 prosecution that ARAKI advocated withdrawal from the
10 League of Nations; further, in refutation of exhibit
11 No. 3765-A wherein it was stated that ARAKI favored
12 the creation of a situation which might lead Japan to
13 wage a war against the world. I offer defense document
14 No. 3025 and ask that it be received into evidence.

15 THE PRESIDENT: Mr. Comyns Carr.

16 MR. COMYNS CARR: May it please the Tribunal,
17 in my submission, before a document can be received
18 in evidence in answer, as laid down by the Tribunal, to
19 new evidence given by the prosecution, two things
20 must be shown: In the first place, what it is answer-
21 ing, which we haven't been told, that is to say, what
22 exhibit put in by the prosecution it is answering; and,
23 in the second place, that ARAKI, in this case, has not
24 had the opportunity of answering it before. Every
25 ~~piece of evidence introduced by us in rebuttal against~~

1 ARAKI was specifically put to him in cross-examination
2 and he had a complete opportunity of answering it.
3 In our submission there can therefore be no room for
4 further evidence on his behalf, and as far as this
5 particular document is concerned, a glance at it
6 shows it doesn't answer anything.

7 THE PRESIDENT: The Court has decided to go
8 into conference to consider certain points raised by
9 counsel this afternoon.

10 We will recess until three o'clock.

11 (Whereupon, at 1432, a recess was
12 taken until 1510, after which the proceedings
13 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: On the 14th of January we
4 gave the following decision, appearing in the trans-
5 cript at page 37,330: "The Tribunal has decided to
6 receive any evidence tendered by the prosecution which
7 in the judgment of the Tribunal has probative value
8 and is of importance, but the defense may apply to
9 tender evidence in answer to the prosecution's further
10 evidence and each application will be considered on its
11 merits." The Tribunal adheres to that decision.

12 The further evidence, if any, to be tendered
13 by the defense will be subjected to the same tests:
14 Has it probative value; is it important; and is it in
15 reply to the prosecution's further evidence?

16 Mr. McManus.

17 MR. McMANUS: Your Honor, may I request a
18 ruling on the document 3025 as to whether or not the
19 Tribunal will receive it in evidence?

20 THE PRESIDENT: By a majority the objection
21 is upheld and the document rejected.

22 MR. McMANUS: I now tender in evidence defense
23 document No. 3026 to show the policy advocated by the
24 Five Ministers' Conference in 1933, as it is claimed by
25 the prosecution that ARAKI, as a member of the cabinet

1 at that time, was as much responsible for these policies
2 as other members of the cabinet. This document is of-
3 fered to show that the policy of the cabinet at that
4 time was to promote international good will by an en-
5 deavor to settle all difficulties in a peaceful man-
6 ner, and by diplomatic means.

7 THE PRESIDENT: Mr. Comyns Carr.

8 MR. COMYNS CARR: May it please the Tribunal,
9 I make the same objection to this as to the last. There
10 is no indication of any particular piece of the prose-
11 cution's further evidence which this is supposed to
12 answer; still less that he didn't have a full opportunity
13 of answering it when he was cross-examined. And I
14 would remind the Tribunal that the HARADA Diary has
15 been open to the defense ever since the 23d of August
16 and could have been used by them in their own case as
17 it was by one of them.

18 MR. McMANUS: If your Honor pleases, the
19 excerpt intended to be used by the prosecution was
20 not tendered to us at the 23d of August. We had no
21 idea what excerpts were going to be used by the prose-
22 cution. We couldn't, naturally, anticipate it, and the
23 diary is so voluminous that it would be impossible to
24 go through the entire diary and try to anticipate what
25 the prosecution might use.

1 If your Honor further pleases, we took the
2 general position that we opposed the introduction of
3 the diary in its entirety. Consequently, when the
4 prosecution saw fit to use excerpts from the diary
5 and these excerpts were accepted by the Court, I think
6 we should be permitted to answer them by the same method,
7 from the SAIONJI-HARADA Diary.

8 Concerning Mr. Carr's statement that it
9 doesn't in particular answer any particular portion
10 or excerpt, I call your Honor's attention that on
11 many, many occasions the policies of the Five Minis-
12 ters' Conference were introduced here in a derogatory
13 way by the prosecution.

14 THE PRESIDENT: It seems to comply with all
15 three tests: It is the Prime Minister's interpretation
16 of that Five Ministers' Conference; it is in reply to
17 the prosecution; it has probative value; and it is
18 important.

19 By a majority the objection is overruled and
20 the document admitted on the usual terms.

21 CLERK OF THE COURT: Defense document 3026,
22 will receive exhibit No. 3866.

23 (Whereupon, the document above re-
24 ferred to was marked defense exhibit No. 3866
25 and received in evidence.)

MR. McMANUS: May I proceed to read, your
Honor?

THE PRESIDENT: Proceed.

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1 MR. McMANUS: (Reading) "Excerpt from SAIONJI-
2 HARADA Memoirs.

3 "Chapter 103 (24 October 1933)

4 "The general outline of the five ministers'
5 conference held on October 25th was given to me in
6 strict secrecy by the Prime Minister. I was requested
7 to transmit the following to the Prince (SAIONJI):

8 "1. Concerning international relations, measures
9 are to be taken for the consummation of our plans peace-
10 fully and by diplomatic means. We must endeavor as much
11 as possible to avoid a collision.

12 "2. Concerning national defense expenditures,
13 they must be adjusted to our national resources, so that
14 we may not suffer from threats of other nations nor be
15 held in contempt by foreign countries.

16 "3. Concerning domestic problems, with each
17 ministry devoting its efforts toward solving difficult
18 issues under their jurisdiction, encourage deliberations
19 among the ministers concerned and plan thus for national
20 stability and prepare for adequate national defence."

21 I now tender in evidence defense document No.
22 3027 to further show the intention of the cabinet then,
23 in 1933, whereby it was in favor of settling interna-
24 tional affairs by diplomacy and to further show that
25 military preparations were for defense purposes alone,

and in no manner to start an aggressive war.

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: May it please the Tribunal,
3 I make the same objections as before to this one and
4 in addition it is a piece cut out of the middle of
5 certain remarks; it doesn't even appear whose remarks
6 they are. We tendered an extract on the next page
7 relating to the same matter and it was rejected by the
8 Tribunal.
9

10 THE PRESIDENT: Mr. McManus.

11 MR. McMANUS: I contend, your Honor, that it
12 is important and has probative value to further show
13 the intentions of the cabinet at that time during the
14 Manchurian Incident.

15 THE PRESIDENT: Who is supposed to have said
16 this? This is HARADA's record of something somebody
17 else said.

18 MR. McMANUS: Your Honor, I can't offhand just
19 say now. I merely took the excerpt from the diary.

20 THE PRESIDENT: By a majority the objection is
21 sustained and the document rejected.

22 MR. McMANUS: I now tender defense document
23 3028 to show the further policy of the cabinet at that
24 time to avoid war with Russia and the United States and
25 to show the further policy of non-withdrawal from the

League of Nations.

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: May it please your Honor,
3 it doesn't show anything of the sort. It purports to
4 be a secret agreement between the two General Staffs
5 and, in fact, within a very short time after that date
6 they did withdraw from the League of Nations.
7

8 THE PRESIDENT: Who was the Navy Minister at
9 that time? None of the accused, apparently.

10 MR. McMANUS: Your Honor, I don't believe he
11 is one of the accused, but he was a member of the same
12 cabinet that ARAKI was a member of in 1932.

13 THE PRESIDENT: By a majority the objection is
14 sustained and the document rejected.

15 MR. McMANUS: I now tender in evidence defense
16 document No. 2189. This document is offered for the pur-
17 pose of refuting the allegations in IPS document No.
18 3150-72A, Exhibit No. 3772-A, wherein Baron HARADA
19 stated that Baron ARAKI was pressing for an immediate
20 withdrawal from the League of Nations in 1933. It is
21 offered to show that there was no pressing whatever,
22 and that ARAKI was an ardent advocate of the diplomatic
23 solution to the difficulties between Japan and the League.
24 I further point out to the Court the defense proof that
25 after such withdrawal ARAKI was the first and the only

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1 person to endeavor to promote international peace and
2 harmony by his proposed advocacy of an international
3 peace conference, which proof has been submitted and
4 accepted by this Tribunal.
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1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: I object to my friend's
3 using this offer to deliver part of his summation.
4 With regard to this document and every remaining
5 document on this list, it has been previously offered
6 to and rejected by this Tribunal, this one at page
7 28,576. The Tribunal has repeatedly refused to ad-
8 mit documents previously rejected by it, and I ask
9 it to do the same with regard to all these documents;
10 and to save time, may I be taken as objecting to each
11 and every one of them on the same ground.

12 MR. McMANUS: Your Honor will note, of
13 course, that I just omitted the previous document
14 in my order list, intending to discuss that a little
15 later concerning a rejected document. I sincerely
16 was under the impression that this document had not
17 been submitted before. However, your Honor, in view
18 of the fact on page 36,637 of the record, wherein
19 it was stated that ARAKI was pressing for an immediate
20 withdrawal from the League of Nations, possibly your
21 Honor would consider this document, even though it
22 has been rejected by the Tribunal, as I am informed
23 by the prosecutor.

24 THE PRESIDENT: The objection is sustained
25 and the document rejected.

1 MR. McMANUS: Concerning the next document.
2 I intend to offer, your Honor, I will state that this
3 document has already been submitted. It is defense
4 document 1848 and has been rejected by the Tribunal.
5 However, I ask the Tribunal's reconsideration on the
6 ground that Lord Lytton and ARAKI had an interview
7 on March 5, 1932, and because of the importance of
8 the Lytton report submitted by the prosecution I
9 think Lord Lytton's discussion with ARAKI is impor-
10 tant and has probative value to show ARAKI's views
11 toward the recognition of Manchukuo at that time.

12 I might inform the Court that if the docu-
13 ment is accepted I intend to read just a few excerpts
14 therefrom.

15 THE PRESIDENT: Where is the document? We
16 have not seen copies yet. I am assuming that having
17 rejected it once we will reject it again. There is
18 no objection yet.

19 MR. COMYNS CARR: I did say to save time I
20 was objecting to every one of these documents on the
21 same ground, having been rejected before, but I will
22 take it each time.

23 MR. McMANUS: I have two other documents,
24 if the Court pleases, but because of processing
25 difficulties I have not had time to offer them, but

1 they are the only two documents that I would like
2 to tender. However, I request the Tribunal --

3 THE PRESIDENT: The objection is upheld and
4 the document rejected.

5 MR. McMANUS: However, I request the Tribunal
6 to permit me at some convenient time, when the processing
7 of these documents is completed, to permit me to
8 finish the balance of my surrebuttal by the offering
9 of these two extra documents. I have no further docu-
10 ments to tender at this time.

11 MR. HAYASHI: I am counsel HAYASHI, repre-
12 senting the accused HASHIMOTO.

13 On behalf of the accused I should like to
14 present in evidence defense document 602-A-2, an
15 excerpt from an interrogation of the accused HASHI-
16 MOTO on the 17th of January, 1946. These excerpts
17 are different portions of the interrogations, ex-
18 cerpts of interrogations, tendered in evidence by
19 Mr. Woolworth of the International Prosecution Section
20 on the 23rd of January, which was given exhibit No.
21 3846, and I wish to tender in evidence that part which
22 was not included in the document, 3846.

23 THE PRESIDENT: The document is not in the
24 possession of the Clerk of the Court; so pass on to
25 something else.

1 MR. HAYASHI: This is the only document I
2 intend to tender in evidence, sir.

3 THE PRESIDENT: You have no witness?

4 MR. HAYASHI: There are no witnesses.

5 THE PRESIDENT: Well, the document is not
6 in court, and we cannot hear your argument on it
7 unless we have it.

8 MR. HAYASHI: I filed my documents with the
9 Clerk of the Court on Tuesday.

10 THE PRESIDENT: Who else is ready to present
11 documents?

12 Mr. Lazarus.

13 MR. LAZARUS: Mr. President, on behalf of
14 the accused HATA, we wish to introduce excerpts from
15 only two of the prosecution's exhibits, introduced by
16 the prosecution in its rebuttal.

17 We first offer defense document 2992. This
18 is an additional excerpt from the interrogation of
19 Admiral Mitsumasa YONAI, which was prosecution's
20 exhibit for identification 3831 (record 37,999). At
21 the time of its introduction, the defense stated it
22 would present a further excerpt from the interrogation
23 in order to fill out the picture and present fully to
24 the Tribunal YONAI's statements with reference to
25 HATA and HATA's actions as War Minister in the YONAI

1 Cabinet. The document is important and it does have
2 probative value, we submit. It is our only document
3 on the matter of the YONAI Cabinet.

4 THE PRESIDENT: Mr. Sutton.

5 MR. SUTTON: If the Tribunal please, the
6 prosecution objects to this document, as there was
7 nothing new brought out to which this is an answer.
8 YONAI was introduced as a witness for the defense,
9 and this at best would be an attempt to bolster
10 their own witness.

11 MR. LAZARUS: I respectfully point out to
12 the Tribunal that at the time the prosecution intro-
13 duced its excerpts I pointed out that the excerpt
14 and the portion thereof which the prosecution intro-
15 duced failed to present the full picture of what
16 YONAI said at this interrogation. We respectfully
17 submit the balance of the excerpt which we have here
18 to show to the Tribunal what YONAI really said about
19 HATA and HATA's action in the YONAI Cabinet.

20 THE PRESIDENT: By a majority the objection
21 is sustained and the document rejected.

22 MR. LAZARUS: We next offer defense document
23 2999. This is the first of a series of short excerpts
24 taken from prosecution's exhibit 3834 for identifica-
25 tion (record 38,020). This exhibit is the five-

1 volume record of the trial in Shanghai in May 1946,
2 by an American court of the Commanding General, two
3 members of the court and the jailer, responsible for
4 the atrocities against the Doolittle fliers and their
5 trial and execution. We will offer only excerpts
6 from the most important witnesses and the accused
7 themselves to refuse the prosecution's contention
8 that General HATA, as Commanding General in China,
9 with Headquarters in Nanking, was responsible for the
10 atrocities, trial and execution which took place
11 under the 13th Army of Lieutenant General SAWADA,
12 with Headquarters in Shanghai where all this took
13 place.

14 This first excerpt is prosecution's trans-
15 cript exhibit No. 25, the statement of Major HATA,
16 Itsuro, who was the prosecutor of the Doolittle
17 fliers at their trial. In this document we now offer,
18 he states that Imperial Headquarters in Tokyo com-
19 manded the death sentence of five of the fliers,
20 ordered the remaining three executed, ordered the
21 men treated not as prisoners of war but as war crimi-
22 nals, and the Commanding General of the 13th Army
23 gave the order for the execution of the three men.
24 It shows that at no time was there any opportunity for
25 action by HATA's Headquarters in Nanking. The four

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1 accused Japanese themselves in later excerpts con-
2 firmed these facts when they took the stand at their
3 own trial for these atrocities.
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THE PRESIDENT: Mr. Sutton.

1 MR. SUTTON: May it please the Tribunal, the
2 prosecution objects to the introduction of this document.

3 The defense introduced in this case the alleged
4 confessions of the eight Doolittle fliers. The prosecu-
5 tion introduced in rebuttal excerpts from the SAWADA
6 trial to show the circumstances under which those con-
7 fessions were obtained, to show that they were obtained
8 by duress and coercion.
9

10 One excerpt from the SAWADA trial was directly
11 put to MIYANO, who testified therein, denied by him, and
12 that excerpt introduced by the prosecution in rebuttal.
13 That is all that was offered from the SAWADA trial.

14 We respectfully submit that there was nothing
15 new brought into the case by the excerpt offered from
16 the SAWADA trial. We object to the introduction of this
17 and the succeeding excerpts from that trial.

18 MR. LAZARUS: The prosecution, if the Tribunal
19 please, has sought in introducing these excerpts from
20 the SAWADA trial to place the blame for the atrocities.
21 This series of excerpts which we are about to submit
22 shows who actually committed these atrocities and who
23 gave the orders for their commission, if the Tribunal
24 please, and they absolutely --
25

THE PRESIDENT: But how is that a reply to any

evidence given in an alleged rebuttal? We will put it
that way.

MR. LAZARUS: The prosecution introduced the
excerpt from MIYANO which stated that General HATA had
given the order for the trial and had demanded the
death penalty for these fliers. Now here the accused
themselves at this trial, on trial for their lives, for
these atrocities, and their witnesses -- the people who
took part in the trial of the Doolittle fliers -- state
where the orders came from for the performance of these
atrocities, and they state it did not come from HATA, and
we submit that is proper rebuttal, that HATA had nothing
to do with this trial or these atrocities.

In the individual defense of General HATA we
introduced nothing about the atrocities or torture of
the Doolittle fliers, but the prosecution in rebuttal
did introduce such evidence, and we mean to meet it.

(Whereupon, Mr. Sutton came to the
lectern.)

THE PRESIDENT: We cannot hear you twice. Do
you want to correct something that was wrong?

MR. SUTTON: With the permission of the Tribunal,
I would like to state that that evidence was introduced
in the general phase.

THE PRESIDENT: By a majority the objection is

sustained and the document rejected.

1 MR. LAZARUS: I next offer defense document
2 2998. This is an excerpt from the testimony of Army
3 Judicial Major General Shoshi ITO, who gave the final
4 orders for the execution of the three Doolittle fliers.
5 General ITO states here that he was head of the
6 Judicial Department of the 13th Army at the time of the
7 trial of the Doolittle fliers. He too states that re-
8 port was made to Tokyo through Nanking. He states he
9 received an order from the Chief of Staff that the sen-
10 tence be forwarded to Tokyo immediately.

11 THE PRESIDENT: Mr. Sutton.

12 MR. SUTTON: The prosecution objects to the
13 introduction of this document for the same reason as-
14 signed in our objection to the previous document. This
15 matter was fully explored by the defense in the indi-
16 vidual phase of General HATA, and this is the same type
17 of testimony offered by the defense in his individual
18 phase.
19

20 MR. LAZARUS: We still have to meet, Mr. Presi-
21 dent, the prosecution's rebuttal evidence, that MIYANO
22 stated HATA was responsible for the trial. Here all
23 these people stated this is not so, and we have got to be
24 permitted to meet this prosecution evidence.
25

This man was chief of the Judiciary of the 13th

1 Army which tried the Doolittle fliers. He says where
2 the orders for the trial came from, and they did not
3 come from HATA. That is both important and it does have
4 probative value.

5 THE PRESIDENT: By a majority the objection is
6 sustained and the document rejected.

7 MR. LAZARUS: We next offer defense document
8 3003. This is an excerpt from defense transcript ex-
9 hibit No. 10, the affidavit of General SHIMOMURA, who
10 succeeded Lieutenant General SAWADA as Commanding General
11 of the 13th Army in Shanghai after the trial of the
12 Doolittle fliers, but before the three fliers were
13 executed.

14 This document shows SHIMOMURA was in Japan when
15 he was assigned as new commanding general of the 13th
16 Army in Shanghai. Before leaving for Shanghai he made a
17 courtesy call on Imperial Headquarters in Tokyo, where,
18 since he had no previous connection with the Doolittle
19 fliers, he asked for instructions, and was told by the
20 Chief of the General Staff, "This affair has been
21 thoroughly investigated and the final decision has been
22 made in Tokyo. As a result there is nothing that
23 Shanghai or Nanking can do about this decision except
24 carry it out. As to the details and procedures of the
25 trial, you can get a report from the one responsible

1 at the time when you get to Shanghai."

2 here again --

3 MR. KEENAN: Just a moment.

4 MR. LAZARUS: May I finish, please?

5 THE PRESIDENT: Yes, we insist on his complet-
6 ing what he has to say.

7 MR. KEENAN: He is reading the document in
8 introducing it.

9 THE PRESIDENT: You have prepared a script
10 for the translation people?

11 MR. LAZARUS: Yes.

12 THE PRESIDENT: It is only for that reason we
13 are allowing you to do it.

14 MR. LAZARUS: Yes, that is right.

15 THE PRESIDENT: Some of these explanations are
16 too long.

17 MR. LAZARUS: Here again this document shows
18 that Nanking was not the responsible place, but Shanghai,
19 the headquarters of the 13th Army, the place to which
20 the fliers had been sent for trial directly from Tokyo.

21 THE PRESIDENT: Mr. Sutton.

22 MR. SUTTON: If it please the Tribunal, the
23 prosecution objects to the introduction of this document
24 for the reason assigned in objecting to the other excerpts
25 from the SAWADA trial, and for the additional reason

1 that it appears from the face of the document that it
2 all took place after the trial, the earliest date on the
3 document being October 8, and the trial was held in
4 August.

5 MR. LAZARUS: This is the commanding general
6 himself who gave the orders to his own army, the 13th
7 Army, to execute the Doolittle fliers, and he says where
8 his orders came from. They came from Tokyo, and not
9 from HATA. Surely, this has probative value and is
10 all-important, and answers the prosecution's exhibit
11 that HATA gave the orders for the trial.

12 THE PRESIDENT: By a majority the objection is
13 overruled and the document admitted on the usual terms.

14 CLERK OF THE COURT: Defense document 3003
15 will receive exhibit No. 3867.

16 (Whereupon, the document above re-
17 ferred to was marked defense exhibit No.
18 3867 and received in evidence.)

19 MR. LAZARUS: I will omit the formal part and
20 begin with the first full paragraph:
21

22 "8 October 1942.

23 "On this day, orders were issued for the
24 change in command of the 13th Army. Lieutenant General
25 SAWADA was in Shanghai at the time, while Lieutenant
General SHINOMURA, commandant of the Army General Staff

1 College up to this date, was in Saitama province, engaged
2 in maneuvers which had been going on since 1 October.
3 However, he was immediately recalled to Tokyo and assigned
4 as army commander.

5 "9 October 1942 - Lt Gen SHIMOMURA makes
6 courtesy call to Imperial Headquarters."

7 * * * *

8 "Up to this day (9 Oct) Lt Gen SHIMOMURA ab-
9 solutely had no connection with this incident. There-
10 fore, he asked for a more detailed explanation and
11 was given the following answer by the Chief of the
12 General Staff:

13 "This affair has been thoroughly investigated
14 and the final decision has been made in Tokyo. As a
15 result, there is nothing that Shanghai or Nanking can
16 do about this decision except carry it out. As to the
17 details and procedures of the trial, you can get a re-
18 port from the one responsible at the time when you reach
19 Shanghai."

20 THE PRESIDENT: We will adjourn until half-
21 past nine Monday morning.

22 (Whereupon, at 1600, an adjournment
23 was taken until Monday, 2 February 1948, at
24 0930.)
25